

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Bank of New York Mellon

REC'D NOV 18 2024

V

17-5453

Mark Mazza, Lisa Mazza

ORDER

And now this            day of            , 2024, it is hereby ordered and decreed defendants motion  
to vacate the judgment/orders of May 24, 2023 is granted.

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J.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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MOTION TO VACATE PURSUANT TO FRCP 60(b)(4)

- 1 This court granted judgment/orders for ejectment on May 24,2023.
- 2 This matter was removed to federal court .
3. The ejectment complaint sought removal of defendants from the property, with no request for a monetary sum nor was there a pecuniary amount in controversy.
- 4 Ejectment cannot be reduced to a monetary amount for purposes of amount in controversy , which did not exist for this court to have subject matter jurisdiction.
5. The requirements for diversity to support federal jurisdiction was lacking as the amount in controversy requirement was not nor could not be met regarding this matter, failing to satisfy the requirements of 28 USC 1332.
6. Challenges to subject matter jurisdiction may be raised at any time.
7. Due to lack of jurisdiction, defendants aver the judgments/orders of May 24,2023 granting ejectment are void.
8. Defendants seek relief pursuant to FRCP 60 (b)(4), for vacating the May 24,2023 judgments/orders.

Wherefore, the defendants' request this motion be granted.

  
MARK MAZZA

  
LISA MAZZA

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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MEMORANDUM OF LAW



Plaintiffs' complaint in ejectment sole request for relief was for defendants to be removed from the subject property. Lacking within the pleading was an amount in controversy or pecuniary claim , and therefore a claim for ejectment cannot be reduced to a monetary amount.

There is no subject matter jurisdiction, and this case failed to meet the requirements of 28 USC 1332. The amount in controversy requirement could not be met , a necessary element that was lacking so as to result in lack of subject matter jurisdiction. The amount in controversy is determined at time of removal, and based on the complaint there were no monetary amount Ejectment cannot be reduced to a monetary amount for purposes of the amount in controversy, and in this case it failed to meet the above statutory requirements.

Courts evaluate the complaint at time of removal to determine whether the amount in controversy exceeds \$75,000. See *St. Paul Mercury Indem. Co. v Red Cab Co.* 303 U.S. 283, *Auto Owners Ins. Co. v Stevens and Ricci* 835 F.3d 388(3d Cir. 2016) This motion is proper for filing at this time in the district court while the appeal is pending. If this court indicates that it will grant the motion , the defendants appellants are then required to make a motion in the appellate court for a remand of the case in order that the district court may grant the motion. (quoting *Main Line fed. Savings and Loan Assoc. V Tri-Kell* 721 Fed 904 (3d Cir. 1983) Once remanded , the district court will have power to grant the motion , but not before. See also *F.P. Woll and Co. v Fifth and Mitchell Corp.* No. CIV A 96-5973 , 2008 WL 414 8603 (E.D. Pa. 2008).

Pursuant to FRCP 60(b)(4). This court lacked subject matter jurisdiction to consider and decide this ejectment case . The judgments /orders of ejectment entered on May 24,2023 are void and must be vacated by this court. Additionally, in the alternative defendants claim waiver if plaintiff previously failed to contest or dispute regarding the amount in controversy in this court and appellate court. This motion supersedes defendants motion filed on November 17,2024.

Wherefore, defendants request this motion be granted.

  
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MARK MAZZA  
  
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LISA MAZZA

Certificate of Service

The attached motion was served on the below named by USPS mail on November 18 ,2024

Joseph Riga, Esq.  
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MARK MAZZA